SUMMARY DESCRIPTION OF H.R. 4280

(RETIREMENT EQUITY ACT)

Scheduled for Markup

by the

Committee on Ways and Means

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Prepared by the Staff

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INTRODUCTION

This document provides a summary description of the provisions of H.R. 4280 (Retirement Equity Act), which has been referred jointly to the Committee on Education and Labor and the Committee on Ways and Means. H.R. 4280 is scheduled for markup consideration by the Committee on Ways and Means on March 27, 1984. The Committee on Education and Labor has held markup on the bill, but has not yet filed a report on the bill.

The Senate has passed provisions similar in nature to H.R. 4280, in H.R. 2769 as amended by the Senate on November 18, 1983. H.R. 2769 as passed by the House contained the Caribbean Basin Recovery Act; this Act was subsequently enacted in title II of H.R. 2973 (P.L. 98-67). The Senate Committee on Finance amended H.R. 2769 with the provisions of S. 1978, and reported H.R. 2769, as amended, on October 29, 1983 (S. Rep. No. 98-285).

The Committee on Ways and Means held hearings on the subject of retirement equity on October 25-26, 1983. (See Joint Committee staff pamphlet, "Description of Bills Relating to Economic Equality in Various Tax, Pension, and Related Federal Laws," JCS-50-83, October 21, 1983.)

Present Law	H.R. 4280	Proposed Modifications	Comments
A. Crediting Periods of Service			
1. Maximum participation age. Maximum age that plan generally can require employee to attain before becoming a participant is 25.	1. Maximum participation age lowered to 21. Defined benefit plans may retain age 25, provided retroactive credit is given for all service after age 21 for benefit accrual purposes.	1. Lower maximum participation age to 21; provide no optional rule for defined benefit plans.	1. H.R. 4280 adds significant complexity to the participation rules. Also deprives employees of certain plan information and possible plan death benefits. The proposal is consistent with the provisions of H.R. 2769.*
2. Minimum vesting age. Plan generally can disregard years of service prior to age 22 for vesting purposes.	2. Age at which service must be counted for vesting purposes lowered to 18.	2. Generally follow provisions of H.R. 4280.	
3. Break in service rules. For nonvested participants, prior years of service may be disregarded for participation and vesting purposes if consecutive years of break in service equal or exceed prior years of service ("the Rule of Parity"). Under certain plans, years of service after a break in service need not be counted for determining vested percent in pre-break account balance.	3. Under the Rule of Parity, prior years of service may not be disregarded until participant has at least 5 consecutive years of break in service. Post-break service must count for vesting in pre-break account balance unless participant has 5 consecutive years of break in service.	3. Generally follow provisions of H.R. 4280.	
4. Maternity/Paternity leave. Participants on paid maternity/paternity leave may be entitled to credit for up to 501 hours under the normal break in service rules. Credit of more than 500 hours of service in a period prevents a break in service.	4. No break in service occurs solely on account of absence due to pregnancy, childbirth, or adoption in either (1) the year of birth, etc., or (2) the following year. Credit is required for break in service purposes for the hours that would have been credited but for the absence or, if such hours are unknown, 8 hours per day of absence.	4. Generally follow provisions of H.R. 4280.	

*H.R. 2769 (the Retirement Equity Act of 1983) was passed by unanimous consent in the Senate on November 18, 1983.

Present Law	H.R. 4280	Proposed Modifications	Comments
B. Joint and Survivor Annuity and Preretirement Survivor Benefits			
1. Plans required to provide joint and survivor annuity and preretirement survivor benefits. Only plans that provide a life annuity as the normal form of benefits must provide joint and survivor annuity unless the participant declines it. BBS Associates, Inc. v. Comm'r.	1. All pension plans must offer a life annuity option. All plans offering a life annuity (whether normal or optional form of benefits) must provide an automatic joint and survivor annuity (reverses BBS). Exception provided for stock bonus and profit-sharing plans that pay full vested benefit at death and no life annuity option at retirement.	1. All plans required to provide an automatic joint and survivor annuity and preretirement survivor annuity. An exception is provided for any defined contribution plan that (1) pays the full account balance to the surviving spouse at the participant's death (2) does not offer an annuity as a form of benefits.	1. Proposed modification provides more equitable treatment of plan participants by providing an automatic survivor benefit with respect to any vested benefits with no minimum service requirement.
2. Availability of survivor benefits. Certain plans must provide automatic joint and survivor annuity at normal retirement age. If plan permits early retirement, survivor benefit coverage is elective for participants at later of (a) plan's early retirement age or (b) 10 years before normal retirement age. A plan may provide that vested benefits are forfeited if participant dies before normal retirement age (and has not elected early retirement survivor coverage).	2. Under covered plans, joint and survivor annuity coverage is automatic after participant completes 10 years of service without regard to whether participant's retirement benefits become nonforfeitable prior to that time.	2. Under covered plans, (a) joint and survivor annuity coverage is automatic at the annuity starting date and (b) preretirement survivor annuity is automatic when participant has any vested benefits under the plan.	
3. Spousal consent. Participant need not secure spouse's consent to decline a joint and survivor annuity (except as may be required by community property law).	3. Spousal consent is required to decline the joint and survivor annuity.	3. Generally follow provisions of H.R. 4280; require spousal consent to decline joint and survivor annuity or preretirement survivor annuity.	

Present Law	H.R. 4280	Proposed Modifications	Comments
B. Joint and Survivor Annuity and Preretirement Survivor Benefit, cont.			
4. Notice and election procedures. Participant must be notified of right to decline joint and survivor annuity. Notice must be given within a reasonable period before annuity starting date. Notice of elective survivor benefit must be given within a reasonable period before early retirement age.	4. Notice must be given to a participant within a reasonable period after the survivor benefit coverage becomes automatic. Notice and election are not required before the annuity starting date if the employer fully subsidizes the survivor benefit.	4. Notice and election are required (a) in the case of a joint and survivor annuity, as provided under present law and (b) in the case of a preretirement survivor annuity, within a reasonable period before a participant attains age 35. Notice and election are not required if the employer fully subsidizes the survivor benefits.	4. Proposed modification provides procedures for the plan participant and spouse that guarantee that elections will not be made prior to the time that the elections are most relevant.
5. One-year marriage rule. Plan may provide that the survivor annuity is payable only if the participant is married to the same spouse for at least 1 year before (a) the annuity starting date and (b) death.	5. Plan may provide that participant must be married for at least 1 year before the earlier of (a) the annuity starting date or (b) death. An exception is provided for certain participants who marry within 1 year of the annuity starting date.	5. Generally follow provisions of H.R. 4280.	
6. Two-year nonaccidental death rule. Plan may provide that the survivor annuity is forfeited if participant dies (due to nonaccidental causes) within 2 years after an election is made with respect to a joint and survivor annuity.	6. Repeals the 2 year nonaccidental death rule.	6. Generally follow provisions of H.R. 4280.	

Present Law	H.R. 4280	Proposed Modifications	Comments
C. Distributions of Benefits upon Divorce			
1. Preemption of State law. ERISA preempts all State laws that are inconsistent with its provisions. Some courts have created an implied exception for State domestic relations law. Assignment and alienation of benefits. The ERISA spendthrift provisions generally prohibit the assignment of benefits. Some courts have held that payments to a former spouse pursuant to a divorce, etc., order do not violate the spendthrift rules.	1. Amends ERISA preemption provisions. ERISA preemption and spendthrift provisions do not apply to "qualified domestic relations orders."	1. Provides an exception to the spendthrift provisions for "qualified domestic relations orders."	1. Proposal only modifies spendthrift provisions because Code does not contain ERISA preemption provisions. Committee Report could clarify Committee intent that qualified domestic relations orders are the only orders eligible for the exception to the assignment prohibition.
2. Qualified domestic relations order. No relevant provision under present law.	2. Defines qualified domestic relations order. Provides procedures and time for plan administrator determinations of whether order is qualified.	2. Generally follow provisions of H.R. 4280.	
3. Suspension of benefit payments. No relevant provision under present law. Fiduciary standards may require plan administrator to suspend benefits subject to dispute.	3. Permits suspension of all benefits in dispute for 3 years to enable plan administrator to locate former spouse and cure defects in order. After expiration of 3 year period, payments to former spouse are prospective only.	3. Generally follow provisions of H.R. 4280, except limit suspension of benefit period to 24 months.	3. 3-year suspension could create excessive hardship for plan participant. Plan administrator should be able to resolve issues within 24 months.
4. Status of alternate payee. No relevant provision under present law.	4. Former spouse treated as beneficiary only for purposes of obtaining plan documents.	4. Treat former spouse as a beneficiary for all purposes under the plan.	4. Proposal generally follows provisions of H.R. 2769.
5. Tax treatment of divorce distributions. Present law is unclear with respect to the tax treatment of benefits distributed upon divorce.	5. Permits any former spouse to use 10-year forward income averaging for lump sum distributions.	5. Deny 10-year forward income averaging on lump sum distributions to former spouse. Any lump sum distribution would be eligible for rollover to an IRA.	5. Permitting 10-year averaging to the former spouse would require inordinately complex allocation rule changes to the lump sum distribution rules. In addition, denying such treatment encourages former spouses to roll over amounts to IRAs and, therefore, save for retirement.

Present Law	H.R. 4280	Proposed Modifications	Comments
D. Involuntary Cash-outs			
If present value of benefits of a participant who separates from employment do not exceed $1,750, plan can cash out the benefits without the participant's consent. No credit for prior service is required if participant later returns and does not repay the amount previously cashed out. Payments to surviving spouse or former spouse of participant may be made without the consent of the surviving spouse or former spouse.	Raises involuntary cash-out limit to $3,500. Plan must use interest rate assumption to value benefit that is no greater than the PBGC rate for valuing immediate annuities. Payments to a surviving spouse may not be cashed out involuntarily unless present value is less than $3,500. Plan required to make payments to an IRA or another qualified pension plan unless surviving spouse fails to designate such a plan within 60 days of notice of payment.	Generally follow provisions of H.R. 4280. Plan not required to make payment to an IRA or qualified pension plan. Surviving spouse or former spouse entitled to roll over any lump sum payments into an IRA or another qualified pension plan.	Mandatory rollover rule imposes significant administrative burdens on plan. Surviving spouse or former spouse has right to make the rollover individually.
E. Cutback in Accrued Benefits			
Present law prohibits plan amendments that reduce previously accrued benefits. Rev. Rul. 79-90 requires plan to specify interest rate assumptions used to value benefits. Rev. Rul. 81-12 prohibits plan amendments that eliminate benefit options for previously accrued benefits.	No provision.	Codify Rev. Ruls. 79-90 and 81-12.	Codification of the revenue rulings will protect employee benefits against unauthorized retroactive benefit reductions.

H.R. 4280	Proposed Modifications	Comments
F. Effective Dates		
1. General rule. Effective date for new plans is the date of enactment. Effective date for existing plans is plan years beginning after December 31, 1984. In the case of a collectively bargained plan, provisions are effective for plan years beginning on or after the earlier of (a) the expiration of the last collective bargaining agreement or (b) January 1, 1987. Plan need not be amended to meet the requirements of the bill until the earlier of (a) the date the plan is first otherwise amended or (b) the first plan year beginning after December 31, 1986, provided the plan is administered in a manner that satisfies the requirements of the bill.	1. Generally follow provisions of H.R. 4280, but provide no special effective date for new plans. Do not follow provision of H.R. 4280 that permits an employer to defer amending the plan, except as provided in 2., below.	
2. Crediting periods of service. No relevant provision.	2. Plan need not be amended to include the maternity/paternity leave provisions until the plan is first otherwise amended after the effective date, as long as the plan provides the required maternity/paternity leave credit.	

H.R. 4280	Proposed Modifications	Comments
F. Effective Dates, cont.		
3. Joint and survivor annuity and preretirement survivor benefits. a. Provisions generally effective as provided in 1. above. b. In the case of participants who die between the date of enactment and the effective date, a joint and survivor annuity must be provided if the participant (i) had attained age 45 and completed 10 years of service, (ii) had a nonforfeitable right to benefits, and (iii) had not begun receiving benefits. c. In the case of participants who had separated from service before the effective date after completing at least 10 years of service, the plan administrator must notify the participant of the right to elect to receive joint and survivor benefits.	3. a. Generally follow provisions of H.R. 4280, as provided in 1., above. Require joint and survivor annuity and preretirement survivor benefits to be provided in the case of any participant who (i) meets the requirements for such benefits and (ii) completes an hour of service after the date of enactment. Require spousal consent with respect to any election received after the date of enactment. b. Provide automatic preretirement survivor benefits to the surviving spouse of any participant who (i) performs an hour of service after the date of enactment and (ii) dies before the effective date. c. Provide no special transition rule for participants who separate from service before the date of enactment.	3. Effective date of joint and survivor and preretirement survivor benefits generally is more liberal than H.R. 4280. No special transition rule is provided for participants who have separated from service because such a rule would impose substantial administrative burdens on the plan administrator.

G. ESTIMATED REVENUE EFFECTS OF TAX PROVISIONS OF H.R. 4280, INCORPORATING PROPOSED MODIFICATIONS, Fiscal Years, 1984-89
(Millions of Dollars)

Provision	1985	1986	1987	1988	1989
A. Crediting Periods of Service					
1. Lower maximum participation age in pension plans to 21 years	-34	-59	-75	-82	-85
2. Years of service after age 18 counted for vesting under pension plans	(1)	(1)	(1)	(1)	(1)
3. Rule of parity applied only if break in service exceeds 5 years	(2)	(2)	(2)	(2)	(2)
4. Maternity or paternity leave not treated as break in service	(3)	(3)	(3)	(3)	(3)
B. Joint and survivor annuity and preretirement survivor benefits	(4)	(4)	(4)	(4)	(4)
C. Distributions of benefits upon divorce	(3)	(3)	(3)	(3)	(3)
D. Involuntary cash-outs	(5)	(5)	(5)	(5)	(5)
E. Cutback in accrued benefits	—	—	—	—	—

1/ Loss of less than $10 million.
2/ Negligible loss.
3/ Loss of less than $5 million.
4/ Gain of less than $5 million.
5/ Negligible gain.